

1130 DELEGATION OF AUTHORITY

General Administration 28
Testimony in Private Litigation
Issuing Office: OGC 496-4108
Release Date: 7/1/97

1. **Explanation of Material Transmitted:** This new delegation describes the approval of requests for testimony on NIH employees in lawsuits in which the Federal Government is not a party. This approval is redelegated to the NIH Deputy Director.

2. **Filing Instructions:**

Remove: None

Insert: NIH manual 1130, General Administration No. 28, dated 7/1/97

3. **Distribution:** NIH Mailing Keys F-401, and F-402

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Authority Delegated

1. To approve requests under 45 CFR Part 2 for testimony by employees, in their official capacities, in litigation in which the Federal Government is not a party. All previous delegations of authority inconsistent with the provisions of this delegation are superseded.

To Whom Delegated	Area of Authority
Deputy Director	NIH

Limitations

1. Approval may be granted only if, after consultation with the Office of the General Counsel (OGC), it is determined that the testimony will promote the objectives of the NIH.
2. In determining whether to approve requests for testimony, the approving official shall take into consideration:

- a. whether the testimony is compelled by subpoena or other compulsory process,
- b. whether the information is available by other means,
- c. the extent of disruption of the employee's official duties,
- d. whether the testimony is based on the actual provision of medical care or an examination, or other direct knowledge of the matter, which is acquired by the employee in the course of performing official duties,
- e. whether only expert testimony is involved, and,
- f. whether it will be in the best interests of the NIH to provide the testimony.

3. Parties shall be encouraged to take testimony in the manner that will be the least disruptive to an employee's official duties. In descending order of preference, the means generally utilized to take testimony are by declaration, affidavit, deposition, or personal appearance before the court or other authority.

4. Approval to testify shall require that the requesting party pay any witness fee allowed by law and reimburse the Government for any expenses (these may be waived on grounds of hardship or comity), and, except where it is not feasible and there are compelling policy reasons for providing the testimony, that the witness be served with a valid subpoena or other compulsory process.

5. Approval to testify shall be in writing and may limit the scope of the examination and be subject to reasonable conditions with respect to the time, place, and the manner for taking the testimony. The letter approving or denying the request for testimony must be approved by the Office of the NIH Legal Advisor, OGC, prior to signature by the approving official.

Redelegation

This authority may be redelegated to the Deputy Director for Management, NIH.

Citations

- 1. 45 CFR Part 2, as amended, "Testimony by Employees and Production of Documents in Proceedings where the United States is Not a Party."
- 2. The Secretary's Reorganization Order of October 31, 1995 (60 FR 56605 (11/9/95)).

/s/
Harold Varmus, M.D.
Director, NIH

Effective Date: July 1, 1997